United Nations AT/DEC/1169

Administrative Tribunal

Distr.: Limited
30 September 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1169

Case No. 1256: ABEBE Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Omer Yousif Bireedo; Ms. Jacqueline R. Scott,

Whereas at the request of Selamawit Abebe, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 August 2000 and periodically thereafter until 30 June 2002;

Whereas, on 30 April 2002, the Applicant filed an Application requesting the Tribunal:

"Section II: PLEAS

10. With regard to its competence and to procedure, the Applicant respectfully requests the Tribunal:

...

(c) *to decide* to hold oral proceedings ...

11. On the merits ...:

(d) *to find* that the Applicant is fully eligible to be placed against a post in the Professional category, in conformity with [administrative instruction] ST/AI/412[, of 5 January 1996, entitled "Special Measures for the Achievement of Gender Equality"];

(e) *to find* that the Secretary-General's rejection of the [Joint Appeals Board's (JAB's)] unanimous recommendation was erroneous; and

(f) *to order* the Secretary-General to order the [United Nations Economic Commission for Africa (ECA)] to place the Applicant in a suitable post in the Professional category, in conformity with the JAB's unanimous recommendation and the edicts of ST/AI/412."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 August 2002 and periodically thereafter until 30 April 2003;

Whereas the Respondent filed his Answer on 30 April 2003;

Whereas the Applicant filed Written Observations on 31 August 2003;

Whereas, on 20 November 2003, the Tribunal decided to adjourn consideration of the case until its next session;

Whereas, on 23 June 2004, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of ECA in Addis Ababa as an English Secretary at the G-5 level, on a two-month fixed-term appointment under the 100 Series, on 25 October 1977. The Applicant's appointment was extended several times. On 1 April 1980, she was promoted to the G-7 level and, on 1 August 1982, she was granted a permanent appointment.

On 8 March 1990, the Applicant applied for one of the advertised posts of Project Administrative Officer, at the L-1 level. On 30 August, the Applicant was offered a one-year intermediate-term appointment under the 200 Series of the Staff Regulations and Rules with the Industry and Human Settlement Division (IHSD) as Acting Project Administrative Officer, at the L-1, step 1 level. She was advised that this appointment was subject to her resignation from her permanent post governed by the 100 Series and her acceptance of the new offer under the 200 Series, in accordance with "existing policy governing such movements". The Applicant accepted the offer on 3 September, and signed the following statement:

> "I hereby resign from my permanent post governed under the 100 Series of [the United Nations] Staff Rules and accept the terms of offer under the 200 Series of [the United Nations] Staff Rules, indicated above".

The Applicant received several extensions of contract, however, on 16 January 1996, she was advised that her appointment would not be extended beyond 31 January 1996, due to lack of funds.

On 13 February 1996, the President of the ECA Staff Union Committee requested the approval of the Executive Secretary, ECA, to extend the Applicant's contract by using resources from the overhead budget.

On 2 April 1996, the Officer-in-Charge, Human Resources and Systems Management Division, faxed a memorandum to the Office of Human Resources Management (OHRM), stating, inter alia:

> "I have been trying to sort out a number of cases where general service staff members have been given 200 series appointments, have held these appointments for extended periods and have been given or have assumed expectation to careers under this series of the staff rules. ...
>
> The question whether or not [General Service] staff were properly appointed is not the issue here. They have been serving for some time. The problem is continuing their appointment when none meets the criteria of expert, none is assigned to projects. They perform regular administrative functions. They have all served over two years without break. Therefore extension of their appointments is not within the delegated authority of the Executive Secretary.
>
> ...
>
> With regard to [the Applicant], I believe she will be eligible for consideration under the provisions of ST/AI/412 (Gender Equality) whenever a suitable post arises ..."

In its reply, on 19 April 1996, OHRM pointed out that the staff members of ECA in question had received 200 Series appointments in contravention of the terms of administrative instruction ST/AI/297 of 19 November 1982, entitled "Technical Cooperation Personnel and OPAS Officers", and of the delegation of authority to the Regional Commission in respect of the recruitment of project personnel. OHRM suggested that the General Service staff might be re-employed at the General Service level, provided there were posts to accommodate them.

On 10 May 1996, the Legal Adviser, ECA, informed the Executive Secretary as follows:

> "The 200 Series of the Staff Rules is designed to bring the required expertise which the Organization does not have and does not need for career purposes because by its

nature, a project has a limited duration. Thus a person being appointed to serve brings an expertise related to that project. Staff members under the 100 Series of the Staff Rules may be assigned to support the project for its duration and given 200 series appointment for that assignment. To safeguard that staff member's right under the 100 Series, hi:/her post must be blocked for the period of the assignment.

Where a staff member elects to resign from an appointment under the 100 Series in order to take up a 200 Series appointment on a project, that staff member not only permanently detaches from the 100 Series but also gives up the right to a career in the Organization.

It appears that the staff members were not properly advised as to the consequences of the 200 Series appointment. The only remedy I see to this is that on expiry of their present contract ECA seek exceptional approval to reinstate them in the 100 Series at the [General Service] level they had at the time of the 200 Series appointment. This, of course, will depend on availability of posts and every effort should be made to block General Service posts for them."

On 14 May 1996, the Applicant was informed that her 200 Series appointment would not be renewed, but that she "could be reinstated against a post at the level and grade held at the time she was given the 200 Series appointment ... when the post would become available". On 31 July 1996, the Applicant was reinstated at her previous G-6 level with retroactive effect from 1 February 1996.

On 2 August 1996, the Applicant made an "appeal" against this decision to the Executive Secretary.

On 7 March 1997, following extensive correspondence on the matter with the ECA Administration, the Applicant again wrote to the Executive Secretary, requesting consideration of her earlier "appeals" to him.

On 11 August 1997, the Applicant lodged an appeal with the JAB in New York. The JAB submitted its report on 7 December 1999. Its summary of facts, considerations, conclusions and recommendations read, in part, as follows:

"*Summary of facts*

...

16. On 13 May 1997, the Appellant sent a letter to the Secretary-General requesting a review of the administrative decision to reinstate her to a General Service post and not to a Professional post. ...

...

Considerations

18. The Panel first considered whether the appeal was receivable. The Respondent contended that the appeal was time-barred, since ... [the Appellant] did not request an administrative review until 21 March 1997. ...

19. ... It was the Panel's view that exceptional circumstances existed in this case to warrant a waiver of the time limits, pursuant to Staff Rule 111.3(d).

...

22. ... The material issue was whether the Appellant had a legitimate expectancy of an appointment at the Professional level.

...

24. ... [T]he Panel felt that after she was reinstated in the 100 Series, the ECA Administration should have considered her for a promotion to the Professional level, specially in view of her educational qualifications, her record of very good performance (including six years at the Professional L1/L-2 level), and in view of the Organization's professed goal to increase the number of women serving at the Professional level, as mandated by General Assembly resolution 49/167 of 23 December 1994, and ST/AI/412 ... The Panel observed that no such efforts seemed to have been made by the Respondent, and that upon her reinstatement under the 100 Series, the Appellant was put back at the General Service category, without any efforts to effectively utilize her skills, experience and education. The Panel was of the view that the Commission had missed an opportunity to advance the career of a deserving female staff member, and to improve its performance in meeting its gender distribution targets.

Conclusions and Recommendations

25. In view of the foregoing considerations, the Panel concluded that the Appellant, a female staff member who has served the Organization for more than 20 years, who has earned a Master's Degree at the Organization's expense, and whose performance has always been very good, deserved a full and fair consideration for ... appointment at a Professional level. Therefore, the Panel unanimously recommended that the Secretary-General order the ECA to make bonafide efforts to find the Appellant a suitable post at the Professional level, in conformity with ST/AI/412 ..."

On 10 April 2000, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed her as follows:

"The Secretary-General cannot agree with the Board's conclusions. Pursuant to General Assembly resolution 33/143, the promotion of staff from the General Service category to the Professional category is to be made exclusively through competitive examination. ... ST/AI/412 ..., which introduced particular measures for the achievement of gender equality in the Organization, cannot circumvent resolution 33/143 and in any event does not do away with the examination requirement. Accordingly, the Secretary-General has decided to take no further action on your appeal.

..."

On 30 April 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was not a staff member in the General Service category, therefore, General Assembly resolution 33/143 did not apply to her.

2. Having met all the requirements of ST/AI/412, the Applicant was fully eligible for employment in the Professional category.

Whereas the Respondent's principal contentions are:

1. The Application is not receivable because the Applicant's request for review of the administrative decision of 16 January was time-barred.

2. The Applicant did not have the right or a legal expectancy of continued appointment in the Professional category.

3. Movement of staff members from the General Service category to the Professional category must be effected through competitive examination in accordance with General Assembly resolution 33/143 and the examination requirement cannot be circumvented by the provisions of ST/AI/412.

The Tribunal, having deliberated from 21 October to 20 November 2003 in New York and from 23 June to 23 July 2004 in Geneva, now pronounces the following Judgement:

I. The Applicant is appealing the Respondent's decision to re-employ her at the General Service level, rather than to place her in a Professional post, when the temporary, 200 Series Professional appointment she held for six years was not renewed. The Applicant requests of the Tribunal (1) a finding that the Applicant is fully eligible to be placed against a post in the Professional category, in conformity with ST/AI/412, and (2) an order directing the Secretary-General to order that the Applicant be placed in such suitable Professional post. The Respondent defends against the Applicant's claims, asserting first that the Application is time-barred and not receivable, because the Applicant did not request review of the administrative decision of 16 January 1996 (refusing to extend her 200 Series appointment at the Professional level) until long after the requisite two-month time period applicable under staff rule 211.1(b). Second, the Respondent asserts that the Applicant had no legal expectancy to be extended in her 200 Series appointment and, when the funding for her post ran out, she agreed to be re-employed on a General Service appointment. Finally, the Respondent asserts that the Applicant has no right to be placed against a Professional post, because, as a General Service staff member, she is required to take the G to P competitive examination in order to be considered for a Professional post, and she has not done that. The Applicant asserts that she did not agree to be reinstated at the General Service level and that,

because she held a Professional post at the time her appointment was not extended and pursuant to ST/AI/412, the competitive examination requirement is not applicable to her.

II. The Tribunal must first address the issue of timeliness and receivability. On 16 January 1996, the Applicant's appointment as a Professional on a 200 Series post was not extended, because of insufficient funds. On 1 February 1996, the Applicant was placed on a temporary post at the G-7 level, pending review of the non-renewal decision.

III. Initially, the Applicant sought to have her L-1 appointment renewed. When it became apparent that the renewal would not occur because of inadequate funding, the Respondent offered to re-employ her as a permanent, General Service staff member, at the G-6 level from which she had originally moved to the 200 Series appointment. The Applicant, however, sought to be placed against another Professional post, rather than go back to the General Service level position offered by the Respondent. On 14 May 1996, the Respondent officially notified the Applicant of the offer to re-employ her at the General Service level, retroactive to 1 February 1996, and the Applicant accepted that re-employment. Thereafter, the Applicant contested the decision not to place her against another post, via correspondence with various individuals at the United Nations, requesting that she be placed against a suitable Professional level post. The file is replete with correspondence from the Applicant making her case, as well as with internal United Nations correspondence addressing the very issues the Applicant was raising - about her eligibility or entitlement to be placed against a Professional level post. In one of those letters, written by the Applicant and addressed to the Executive Secretary of ECA, dated 7 March 1997, the Applicant again made her request for placement. The record does not reflect any response by the Executive Secretary to the Applicant.

IV. Thereafter, the Applicant sent a letter to the Secretary-General requesting a review of the administrative decision to reinstate her to a General Service post and not to a Professional post. The Tribunal notes that there is confusion over when the Applicant sent her letter to the Secretary-General to request administrative review. Paragraph 16 of the JAB report states that the request was made on 13 May 1997, while paragraph 18 of that same report states the date of request was 21 March 1997. The Respondent does not dispute that a request was made, but asserts that he does not have a copy of any 21 March request. The Respondent asserts that the request was in fact made on 13 May 1997. The JAB concluded that the circumstances were such that a waiver of the applicable time limits was appropriate.

V. The Tribunal agrees with the JAB that the Application is receivable. It is apparent from the record that subsequent to 16 January 1996, the Applicant and the United Nations were involved in ongoing communications in an effort to resolve the issue of placement of the Applicant, which communications continued at least until 7 March 1997. It is clear that until then there was no final decision of which administrative review would be . ken. Regardless of whether the request for administrative review occurred on 21 March or 13 May, the Tribunal notes that the Applicant is timely. Clearly, the 21 March date was only one week from the Applicant's last letter and well within the two-month window for request. Even if the Applicant had waited until 13 May 1997, however, to submit her request for administrative review to the Secretary-General, in light of the lack of any response by the Executive Secretary to her latest letter dated 7 March 1997, such date was also within the requisite two-month period. This is so, because certainly it was reasonable for the Applicant to wait one week from the date of her 7 March letter for a response to it, and receiving none, to assume that her request for placement had finally been denied. At that point, the two-month period would start to run, and a 13 May request for administrative review would have been timely. Given the confusion over the dates, it would be unfair to penalize the Applicant. Finally, the Respondent, in his letter dated 10 April 2000, while rejecting the JAB's recommendations, did so for reasons unrelated to the issue of timeliness/receivability. The Tribunal finds that the Application is receivable.

VI. The Tribunal now turns to the substantive issue of whether the Applicant was entitled to be placed against another Professional post when her 200 Series appointment was not extended. In order to properly address this issue, the Tribunal must first consider the actions and omissions which led to the situation in which the Applicant found herself - a non-Professional staff member placed on a Professional, temporary post for more than two years, with a contract that could not be extended because of lack of funding and her subsequent reinstatement back to the General Service permanent appointment from which she had originally moved to the 200 Series Professional post.

VII. In this regard, the Tribunal notes that when the Applicant was first offered a Professional position at the 200 Series, she was required to, and did, resign her permanent post under the 100 Series. However, as the Respondent himself concedes, the Applicant was not properly informed as to the consequences of accepting a 200 Series assignment. As the Legal Adviser, ECA, advised the Executive Secretary:

> "Where a staff member elects to resign from an appointment under the 100 Series in order to take up a 200 Series appointment on a project, that staff member not only permanently detaches from the 100 Series but also gives up the right to a career in the Organization.
>
> It appears that staff members were not properly advised as to the consequences of [giving up their 100 Series posts to obtain Professional L-1 posts under] the 200 Series appointment."

However, the Applicant does not complain of this failure to advise, nor of having relinquished her General Service post. In fact, the Applicant has benefited from remaining on a Professional post for six years. Therefore, the Tribunal makes no award to the Applicant in this respect.

VIII. The Tribunal next addresses the Respondent's decision not to renew the Applicant's Professional appointment under the 200 series. The Applicant remained in the 200 Series post for approximately six years, performing administrative duties in support of various projects. When the funding for her Professional post ran out, the Respondent could no longer extend the Applicant's contract. In ordinary circumstances, given the temporary nature of the 200 Series posts, the fact that the Applicant was notified on several occasions that her post was in danger of non-renewal, and absent an express promise that the Applicant would be renewed, the Applicant would not have a legal expectancy of renewal of her appointment. (See Judgments No. 614, *Hunde* (1993); and, No. 885, *Handelsman* (1998).) In the instant case, however, the Respondent admits his culpability in putting the Applicant in the untenable position in which she found herself. Specifically, in an internal memo from the Officer-in-Charge, Human Resources and Systems Management Division to OHRM, addressing the Applicant's situation, as well as those of seven other staff members, similarly situated, the Respondent addresses his decision to initially place the Applicant on the L-1 post and admits his responsibilities in improperly maintaining the Applicant on her 200 Series post for as long as she had encumbered it:

> "The question whether or not these [General Service] Staff were properly appointed is not the issue here. They have been serving for some time. The problem is continuing their employment when none meets the criteria of expert. None is assigned to projects. They perform regular administrative functions. They have all served over two years without break. Therefore extension of their appointments is not within the delegated authority of the Executive Secretary."

In that same internal memorandum, the Respondent also concedes that, in a number of cases, General Service staff members, such as the Applicant, "have been given or have assumed expectation to careers under the 200 Series of the Staff Rules". However, the Applicant herself does not provide any evidence that, in fact, she was given an expectation of a career under the 200 Series, nor is there evidence that any promises, express or implied, were made to the Applicant. In addition, as is apparent from the record, every effort was made to extend the Applicant's contract, but, in the end, there simply were insufficient funds to do so. Furthermore, the Applicant does not present evidence that the Respondent's decision not to extend her 200 Series temporary appointment was based either on discrimination, improper motive or other extraneous factors. Although the Applicant, in a letter to the Personnel Section of ECA dated 18 January 1996, makes reference to two other colleagues who, she alleges, were in similar circumstances and whose contracts were extended on an interim basis "until the outcome of the restructuring [was] made known", without more, this is insufficient to demonstrate that the Respondent's decision not to renew her contract was, in any way, discriminatory, based on bias or prejudice or other extraneous factors. (See Judgements No. 834, *Kumar* (1997); and, No. 1122, *Lopes Braga* (2003).) For these reasons, the Tribunal finds that the Applicant did not have a legal expectancy to a career under the 200 Series, and the non-extension of the Applicant's contract was within the Respondent's discretion and was not improperly motivated by prejudice, bias, or other extraneous factors.

IX. Despite the fact that the Respondent had no obligation to extend the Applicant's 200 Series appointment, however, the Respondent placed the Applicant in the 200 Series post initially and improperly maintained her there beyond the maximum two-year period. Having allowed her to improperly remain in such post for six years, the Respondent then had an obligation to find a solution to the problem he himself had created. In the Applicant's case, the Respondent attempted to do just that, by re-appointing the Applicant to the previous General Service level post from which she had come to the 200 Series. The Applicant, however, contests this decision of re-appointment, alleging (1) that it was a "unilateral" decision by the Respondent about which she had no knowledge until after the fact and (2) that the Respondent had an obligation, by virtue of ST/AI/412, to place the Applicant against a Professional post, not a General Service post.

X. The Tribunal first addresses the Applicant's contention that the Respondent's decision to re-appoint her to a General Service level post was a "unilateral" decision to convert her 200 Series Professional appointment to a 100 Series post at the General Service level, rather than a decision to reinstate her. The Tribunal finds no merit in this claim. The language offering the re-appointment to the Applicant, dated 14 May 1996, makes perfectly clear that the Applicant was to be "reinstated against post GS9 028 at the level and grade [the Applicant] held at the time [she] was given the 200 Series appointment, effective 1 June 1996, when the post becomes available". The Applicant knew the terms of the re-appointment and accepted them. She cannot be heard to complain that the offer was "unilateral" or that she was uninformed or misled about the terms of her placement at the General Service level.

XI. The Tribunal now turns to the issue of whether the Applicant was entitled to be placed against a suitable Professional post under the 100 Series, by virtue of ST/AI/412. The Tribunal first notes the history and context of ST/AI/412.

XII. On 5 January 1996, the United Nations, recognizing the dearth of women at the Professional and higher levels of employment, established goals to achieve gender parity. ST/AI/412 is the most recent codification of the gender equality rules.

Included in ST/AI/412 are "Special measures applicable to the recruitment, appointment and promotion of women to posts at the Professional level and above".

> "Since the present gender distribution within the Secretariat does not provide a sufficient pool of women candidates who could be promoted to higher level posts within the time-frame set by the Secretary-General and the General Assembly, the following special provisions shall apply to increase the pool of women eligible for consideration in all decisions on appointment, particularly to higher-level posts. Women who have been in the service of the Organization, including United Nations programmes, for at least one year, under any type of appointment or as consultants, shall be eligible to apply as internal candidates for vacancies at the Professional levels and above, i.e., they may apply for United Nations internal vacancy announcements. ... If found eligible to apply for an internal vacancy announcement under this provision, a woman candidate shall be expected to document that she meets the qualifications and experience requirements for the post, due regard being paid also to the principle of equitable geographic distribution. Appointments of one year or more at the P-2 and P-3 levels shall be subject to the provisions of paragraph 6 ..."

Paragraph 6 of the same administrative instruction, referred to in paragraph 7, further provides,

> "In order to avoid the apparent circumvention of recruitment policies through the use of short-term appointments, the appointment of staff for periods of up to 11 months shall be exercised strictly on a one-time basis and the practice of perpetuating short-term contracts by means of short breaks in service shall be discontinued. A staff member serving under a short-term contract or a contract of less than one year at the P-2 or P-3 level may not receive an appointment of one year or more unless he or she successfully passes a competitive examination in the appropriate occupational group. Eligibility for such examinations shall be limited to candidates encumbering established posts who are nationals of Member States that are unrepresented, underrepresented or below the mid-point of their desirable range."

In addition, ST/AI/412 envisions that even more preferential treatment be accorded to certain well qualified women;

> "[E]xceptionally well qualified women serving under short-term appointments or appointments of less than one year at the P-2 or P-3 levels and encumbering an established post may, on a limited basis, be allowed to take the competitive examination ... even though they are nationals of Member States above the mid-point of their desirable range or of overrepresented Member States".

XIII. In addition to allowing preferential treatment for women, generally, and more preferential treatment for certain women, ST/AI/412 also sets forth obligations of the Respondent in ensuring that the goals of the administrative instruction are met. For example, paragraph 8 specifically directs the Respondent to identify qualified women candidates for vacant posts:

> "[OHRM] shall assist all departments and offices ... in identifying women candidates who meet the minimum qualifications for any vacant post. For that purpose, [OHRM] shall review potential women candidates within the department or office concerned and outside, including those serving in other departments or offices, in regional commissions, or on mission appointment."

Similarly, paragraph 14 provides:

> "[OHRM] or the local personnel office shall make every effort to identify qualified women staff members who ... have the minimum requisite seniority for accelerated promotion. Those staff members shall be encouraged to apply for the post to be filled and, if appropriate under the applicable placement and promotion procedures, shall be reviewed by departments or offices and by the appointment and promotion bodies."

Finally, paragraphs 16 and 17, respectively, state that:

> "[E]xcept for posts filled through competitive examination, foreseeable vacancies that occur may not be filled by a male candidate until [OHRM] has certified that, despite the best efforts of all concerned for a period of at least six months, it has not been possible to identify and secure a qualified woman candidate ..." and,
>
> "Similar principles shall apply for all appointments that are not subject to review by the appointment and promotion bodies, whether the appointment is made under the 100, 200, 300 series of the Staff Rules. In every case, no male candidate shall be appointed until serious efforts to find suitable women candidates have been made and documents and [OHRM] or the relevant personnel office is satisfied that, despite the efforts of all concerned, it has not been possible to identify and secure a qualified woman candidate."

XIV. Thus, it is clear from the language of the administrative instruction that the Respondent must actively engage in efforts to achieve gender equality. This is consistent with the directive of the Assistant Secretary-General, OHRM, who, in his memorandum to all Heads of Departments and Offices of 27 January 1995, addressed the issue of the Respondent's role in achieving gender parity. In that memorandum, the Assistant Secretary-General advised:

> "As you know, the Secretary-General has committed himself on several occasions to improve the status of women in the Secretariat. ... Our projections show that in order to reach 35% [of the posts subject to geographical distribution being held by women] by 30 June 1995, which is the cut off date for our reports to the General Assembly, all geographical post currently vacant or to be vacated between now and 30 June 1995 should result in the recruitment of women, either at the level of the post or at a lower level.
>
> I understand that this may not be possible in all cases. However, I am requesting you to make every effort to identify qualified women candidates for your vacancies."

XV. The Applicant's claim is based on her premise that because she was a women who had been in the service of the United Nations for at least one year, she was entitled to be placed against a Professional post when her temporary, 200 Series, Professional appointment was not extended and she was reappointed to a 100 Series, G-level position. The Applicant, however, confuses eligibility with entitlement. While the Applicant was certainly eligible to *apply* for an internal position by virtue of ST/AI/412's special measures designed to create gender parity between men and women in the upper echelons of employment, she thus had to actually apply, and she was by no means entitled to be placed against a post. In fact, ST/AI/412 makes very clear that in addition to being

eligible to apply, the Applicant would also have to document that she met the qualifications and experience of any post to which she applied.

XVI. The Applicant never applied for one single Professional post, following the termination of her 200 Series employment at the level. Given her failure to apply, it is difficult to imagine how the Applicant could believe that she was nonetheless entitled to be placed against a Professional post pursuant to ST/AI/412 or otherwise.

XVII. Even though the Applicant had a duty to apply for posts, the Tribunal concludes that the Respondent also had an obligation to identify appropriate posts for which the Applicant might apply and be qualified and to encourage her to apply. In addition, the Respondent should have been prohibited from filling any Professional vacancies, other than those filled by competitive examination, with male candidates, until and unless he had searched for six months for a suitable female candidate. Having failed to find such a suitable female candidate, only then could the Respondent have hired a man for such vacant Professional post. There is no evidence that the Respondent made any efforts, let alone *bona fide* ones, to fulfill his obligations in this respect, and the Tribunal finds that the Respondent acted, vis-à-vis the Applicant, with complete disregard of ST/AI/412. It is hard to imagine that in the relevant time period, not one vacancy could be found for which the Applicant could be sought out and encouraged to apply. It is equally unimaginable that no man was placed against a vacant Professional post during the eighteen-month period between the date of the Applicant's non-renewal and her request for administrative review.

XVIII. According to all accounts, including her performance evalutions and other recommendations from her supervisors, the Applicant is an intelligent, hard working, competent staff member with integrity and a positive, helpful attitude. After losing her 200 Series appointment as a Professional, she was reappointed to a 100 Series post. Since then she has made her way into positions that require a high level of performance and management, and apparently she has been quite successful in her endeavours. The Tribunal notes that the Applicant is exactly the kind of candidate for which these gender parity rules were designed and is disappointed with the Respondent's lack of effort in this regard. The Applicant is entitled to have the Respondent identify posts for which she might be qualified and encourage her to apply, and she is entitled to compensation for the Respondent's failure to do so. Entitlement to identification and encouragement, however,

do not give rise to a right to be placed against a Professional post, and in this regard, the Applicant's pleas are rejected.

XIX. Finally, the Tribunal addresses the issue of whether the Applicant is required to take the competitive G to P examination. The Applicant asserts that since she held a Professional appointment under the 200 Series at the time her appointment was not renewed, she should not be required to take the examination. The Respondent, on the other hand, asserts that since the Applicant is currently a General Service staff member, she is subject to the G to P examination. The Respondent further asserts that General Assembly resolution 33/143, which codifies the requirement of the competitive examination for persons moving from G level to P level posts, supersedes ST/AI/412.

XX. First, the Tribunal appreciates that as a General Service staff member, the Applicant, in ordinary circumstances, would be required to take the examination. This is so, regardless of whether resolution 33/143 supersedes ST/AI/412, as the Respondent alleges, because the two are not in conflict on this issue: ST/AI/412 makes clear the need to take the examination. However, in the instant case, where exceptional circumstances were created by the Respondent himself, the Tribunal concludes that the Applicant, although currently a General Service staff member, should not be required to take the examination in order to encumber a Professional post. The Tribunal notes that it was the Respondent who allowed the Applicant to remain in that Professional capacity beyond one year, without requiring her to take the competitive examination. In fact, the Respondent allowed the Applicant to encumber a Professional post for more than six years. During that entire time, the Respondent allowed the Applicant to perform Professional duties, and the Respondent benefited from the performance of those services. Clearly, the Respondent believed the Applicant possessed skills sufficient to carry out the responsibilities of her Professional post, without requiring an examination to confirm that. If the Respondent believed otherwise, he undoubtedly would have required the Applicant to take the examination before she was allowed to continue in her post beyond the one year period. The Respondent cannot now assert that the Applicant must take the qualifying examination in order to qualify as a Professional.

XXI. In view of the foregoing, the Tribunal:

1. Awards the Applicant as compensation, for the failure of the Respondent to identify suitable Professional posts for which she might be qualified and to encourage her to apply for such positions, six months

net base salary at the salary rate of a P-2 post in effect at the rate of the date of this Judgement;

2. Orders that the Respondent make a substantial and timely effort to identify suitable Professional posts for which the Applicant might be qualified and to encourage the Applicant to apply for these posts; and,

3. Rejects all other pleas.

(*Signatures*)

Julio **Barboza**
President

Omer Youssif **Bireedo**
Member

Jacqueline R. **Scott**
Member

Geneva, 23 July 2004

Maritza **Struyvenberg**
Executive Secretary